IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 518 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITENDRA RATILAL SHAH
Versus
CHIRIPAL FABRICS

Appearance :
Shri DG CHAUHAN for the petitioner
Ms SAITA S RAJU for the respondent
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CORAM : MR.JUSTICE K.A.PUJ

Date : 02/12/2005

ORAL JUDGMENT

The petitioner has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the impugned judgment and order dated 30th July 1997 passed by the Industrial

Court, Ahmedabad in Appeal (IC) No.9 of 1992 and further praying for a direction to the respondents to reinstate the petitioner on his original post with continuity of service with all back wages and all other benefits.

2 It is the case of the petitioner that the petitioner was working as a Clerk-cum-Supervisor on a permanent post and he has put in about 3 years blotless service in the respondent-company. It is also the case of the petitioner that the petitioner was appointed in the year 1978 and the petitioner's service was orally terminated on 10.1.1981 without following any process of law. The petitioner thereupon sent a representation on 6.4.1981 as required under Section 42(4) of the Bombay Industrial Relations Act, 1946. However, there was no reply given by the respondent-company to the said representation and hence the petitioner has filed T Application No.94 of 1981 before the Labour Court on 27.4.1981. The Labour Court after appreciating the oral as well as documentary evidence on record, by its award dated 21.4.1992 granted reinstatement with full back wages.

3 Being aggrieved by the said order passed by the Labour Court, the respondent-company filed Appeal (IC) No.9 of 1992 before the Industrial Tribunal and the Industrial Tribunal set aside the award of the Labour Court and being aggrieved and dissatisfied with the said award of the Industrial Court the

present petition was filed by the petitioner before this Court.

4 Mr D.G.Chauhan, learned advocate appearing for the petitioner has submitted that the order passed by the Industrial Court is patently illegal, erroneous and perverse and the same suffers from serious infirmites and apparent error on the face of it and hence it is required to be quashed and set aside by this Court. Mr Chauhan has further submitted that the Industrial Court has committed misconception of law and facts and has failed to appreciate the impact of the Bombay Industrial Relations Act, 1946 which has resulted into complete misjudgment in making illegal and erroneous judgment order against the petitioner by setting aside the award passed by the Labour Court. He further submitted that the Industrial Court has completely misdirected itself in law as well as facts by its entirely erroneous and misconceived approach in law and committed manifest error of jurisdiction and that the material and decisive evidence Exhibit 35 on record has not been considered in the judgment. Mr Chauhan has further submitted that the Industrial Court has failed to appreciate that the petitioner had served a letter on 13.1.1981 and thereafter since the petitioner did not receive any reply from the respondent, the petitioner submitted approach letter on 6.4.1981 as required under Section 42(4) of the Act and, therefore, the Industrial Court ought to have held that the petitioner had made the

application within the prescribed time limit and since the services of the petitioner were terminated by the respondent, the said application was moved, which was not replied to by the respondent. Mr Chauhan has further submitted that the Industrial Court has failed to appreciate that the services of the petitioner were terminated by the respondent. The Industrial Court ought to have held that the services of the petitioner have been terminated contrary to the provisions of the Bombay Industrial Relations Act, 1946. He has further submitted that the findings recorded by the Industrial Court are contrary to the evidence on record and the Industrial Court has failed to consider the relevant and necessary documentary evidence Exhibits 13(1), 14(1), 14(2), 14(4), 16(1), 16(3), 16(6), 16(8), 16(10) and 39 which clearly show that the petitioner was working with the respondent-company. The Industrial Court further failed to appreciate the oral evidence at Exhibit 19 and 24 on record. The Industrial Court has failed to consider all these documents and drew an incorrect inference therefrom.

5 The affidavit-in-reply was filed on behalf of the respondent-company. Ms Saita S Raju, learned advocate for the respondent-company has submitted that the Industrial Court has passed just and proper order, which cannot be interfered with by this Court while exercising the power under Article 227 of the Constitution of India. She has further submitted that the Labour Court has proceeded on an erroneous

footing. As a matter of fact, the services of the petitioner were not terminated by the respondent-company but what was done by the respondent-company was to reassign the work in Prakash Calendar Company. After examining the relevant documents, the Industrial Court has come to the correct conclusion that the petitioner has failed to prove the termination and hence the order of the Labour Court was set aside by the Industrial Court. She has further submitted that the petitioner has failed to produce any documentary evidence showing the termination of the petitioner. She has further submitted that there is conflicting stand taken by the petitioner as the petitioner's case at one place was that his services were terminated whereas at other place his name was found on the muster roll. It is also found by the Labour Court that several notices were issued by the respondent to the petitioner to join the duty at Prakash Calendar and hence she has submitted that it is not the case of termination and the petitioner was not willing to resume his duties at Prakash Calendar. He has abandoned the services of the respondent-company and hence there is no question of termination. The order passed by the Labour Court was rightly quashed and set aside by the Industrial Court.

6 After having gone through the orders passed by the Labour Court as well as the Industrial Court and after having gone through the records, the Court is of the view that the finding arrived at by the

Industrial Court does not call for any interference by this Court while exercising its power under Article 227 of the Constitution of India. Mr D.G.Chauhan, learned counsel appearing for the petitioner has not pressed the question of back wages and hence there is no question of considering this issue regarding back wages. With regard to reinstatement, this Court has passed an order on 27.7.2005 recording the submission made on behalf of the respondent that the respondent is ready to reinstate the petitioner and the petitioner was ordered to resume his duties on 1.8.2005. The petitioner did not resume the duties on 1.8.2005 and the matter was adjourned to 5.8.2005. The petitioner did not resume the duty on 01.08.2005. The matter was thereafter adjourned to 12.8.2005, 18.8.2005, 26.8.2005 and 1.12.2005 and during this period also the respondent has not shown any inclination to resume the duty. The matter was thereafter adjourned to 1.12.2005. It was argued at length by the learned advocate appearing for the petitioner. At the end of his arguments, at the request of Mr Chauhan the matter is adjourned to today. Today also he is not in a position to say whether the petitioner is ready and willing to resume his duty with the respondent. Ms Raju, learned counsel appearing for the respondent had submitted that the petitioner has not responded to the suggestion made by the Court and even though four months have gone since then, even today there is no positive response from the petitioner as to whether

he is ready and willing to join the respondent. The Court is of the view that the petitioner is already gainfully employed at some other place and because of the same he is not willing to resume his duty with the respondent.

7 The petitioner has not joined the service with the respondent despite the repeated opportunities being given to him. It, therefore, gives rise to the presumption that there is no question of termination of his service by the respondent-company. The Industrial Court has, therefore, rightly come to the conclusion that the petitioner has failed to prove the case of termination. The Industrial Court has arrived at this conclusion after appreciating the evidence and after taking into consideration the entire facts and circumstances of the case and looking to the subsequent conduct shown by the petitioner, even this Court is of the opinion that the only inference that can be drawn against the petitioner is that the petitioner has already been engaged in some other gainful employment and he is not interested in joining the establishment of the respondent. The Court, therefore, does not interfere with the order passed by the Industrial Court. The petition is accordingly dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)

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